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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS

and

COMMUNICATIONS WORKERS OF
AMERICA, DISTRICT 9, AFL-CIO;
COMMUNICATION WORKERS OF
AMERICA

and

AIRTOUCH CELLULAR

and

COMMUNICATIONS WORKERS OF
AMERICA, DISTRICT 9, AFL-CIO;
COMMUNICATION WORKERS OF
AMERICA

Cases 21-CA-075867
21-CA-098442

Case 21-CA-115223

**RESPONSE TO NOTICE TO SHOW
CAUSE**

This response is submitted in response to the Board's Notice to Show Cause issued on May 15, 2020.

First, Charging Party requests the recusal of all Board members. Member Emanuel should particularly be recused because this involves *Caesars Entertainment* and *Purple*

Communications. As we've made clear repeatedly, his firm continues to represent Purple Communications and related litigation.

The Board's Notice deals with Sections 1.6 and 3.4.1 of the employer's 2014 and 2015 Codes of Conduct.

In order to apply the *Boeing* standard, there must be some employer justification. We propose to show on remand to the Administrative Law Judge that there is no business justification for either of these rules.

For example, Section 1.6 of the Code of Conduct provides, in part, that "the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute, is prohibited." We intend to show that employees use company resources all the time "to solicit or distribute" without objection and for very important business purposes. Employees distribute business-related material all the time. They distribute material related to wages, hours and working conditions all the time. They distribute information about products and services all the time. There is no business justification to prohibit that which the employer not only allows but encourages.

The same is true with respect to solicit. Employees solicit among themselves all the time. They solicit ideas, assistance, help, time off, training etc. They solicit from supervisors and managers. There is no business justification to prohibit solicitation which is encouraged and allowed by the employer. Soliciting is a necessary part of the functioning of any business. If the rule were to prohibit solicitation to support trump and his cronies, that would have a legitimate business justification. But the rule isn't that narrow.

The Charging Party should be allowed to show that there is no business justification and, in fact, that there is a business justification to allow employees "to solicit or distribute" literature on work time and non-work time for many purposes related to wages, hours and working conditions.

Similarly, Section 3.4.1 should be remanded to the Administrative Law Judge. The Charging Party will show that there are company policies that are unlawful. Thus, using

company systems to communicate about wages, hours and working conditions where the company policies prohibit such conduct cannot be also made unlawful. To phrase this another way, their unlawful policies restricting employees from using their Section 7 rights, particularly with communication about those rights is unlawful. It is therefore unlawful to prohibit use of company systems where the company policy itself is unlawful.

Additionally, 3.4.1 prohibits “[c]ommunications primarily directed to a group of employees inside the company on behalf of an outside organization.” We shall show that the employer distributes to groups of employees on behalf of many outside organizations. Employees do this. There’s no business justification to limit employees when the employer encourages employees and managers to use company resources to communicate on behalf of various outside organizations. Those outside organizations include vendors, business groups, and promotional opportunities. The word organization is not limited to any kind of organization.

For the reasons suggested above, these rules should be remanded to an Administrative Law Judge to allow the Charging Party to prove not only the lack of a business justification for those rules but, in fact, the employer has a strong business justification to allow the kinds of communications which are prohibited by the rules. Alternative the rules should be remanded to determine if the employer can offer any legitimate business justification.

Dated: May 29, 2020

ORGANIZE AND RESIST

By: /s/ David A. Rosenfeld
DAVID A. ROSENFELD

Attorneys for Charging Party

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Los Angeles, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On May 29, 2020, I served the following documents in the manner described below:

RESPONSE TO NOTICE TO SHOW CAUSE

- ☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from gbautista@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 29, 2020, at Los Angeles, California.

/s/ Gladys Bautista
Gladys Bautista